



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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SEP 19 2013

Scott W. Paradise
450 Piedmont Avenue NE
Atlanta, GA 30308

RE: MUR 6576
Wright McLeod for Congress and
Cameron Nixon in his official
capacity as treasurer

Dear Mr. Paradise:

This is in reference to the complaint you filed with the Federal Election Commission on May 16, 2012, concerning various alleged violations with respect to Wright McLeod for Congress, Bernard Dunstan, Margaret Dunstan, James Hull, and Barry L. Storey. Based on that complaint and information provided by the respondents, on September 10, 2013, the Commission found that there was no reason to believe that the respondents violated 2 U.S.C. §§ 438(a)(4), 441a, provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). Further, after considering the circumstances of this matter, the Commission determined to dismiss the remaining allegations in this matter. Accordingly, the Commission closed its file in the matter.

Documents related to this case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analyses, which more fully explain the basis for the Commission's decision, are enclosed. One or more Commissioners may issue a Statement of Reasons to further explain their consideration of the issues in this matter.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8). If you have any questions, please contact me at (202) 694-1650.

13044343628

Sincerely,

Daniel Petalas
Associate General Counsel
for Enforcement

A handwritten signature in black ink, appearing to read 'Mark Shonkwiler', with a long horizontal line extending to the right.

BY: Mark Shonkwiler
Assistant General Counsel

Enclosures
Factual and Legal Analyses

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 6576

RESPONDENT:

Wright McLeod for Congress and Cameron Nixon
in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed by Scott W. Paradise. *See*

2 U.S.C. § 437(g)(a)(1). Wright McLeod was a Republican candidate for Georgia's 12th congressional district in 2012. His principal campaign committee is Wright McLeod for Congress ("McLeod Committee") and Cameron Nixon is its treasurer. The Complaint alleges that the McLeod Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by:

- using proprietary donor information obtained from Commission disclosure reports filed by Rick W. Allen for Congress to solicit funds in violation of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a);
- accepting excessive in-kind contributions through its use of office space provided at less than the usual and normal charge in violation of 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f);
- failing to properly report excessive in-kind contributions of office space in violation of 2 U.S.C. § 434(b)(3)(A);
- accepting contributions from a limited liability corporation in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 110.1(g); and
- failing to properly disclose various in-kind contributions, payroll expenditures, and staff reimbursement expenditures in violation of 2 U.S.C. § 434(b)(3)(A), (b)(4).

The Complaint also alleges that four individual respondents — Bernard S. Dunstan, Jr., Margaret D. Dunstan (trustee and member manager of J.R. Dunstan Family LLC), Barry L.

1 Storey (president and general equity partner of Barry L. Storey Family Investments, LLLP), and
2 James M. Hull — made excessive in-kind contributions to the McLeod Committee by
3 contributing office space at less than fair market value. All respondents deny the allegations.

4 As detailed below, the Commission found no reason to believe (1) that the McLeod
5 Committee or its vendor, RGC Consulting, LLC, violated 2 U.S.C. § 438(a)(4) and 11 C.F.R.
6 § 104.15(a) by soliciting donors with information from Commission reports; and (2) that any
7 respondent violated 2 U.S.C. §§ 441a(a)(1)(A) or 441a(f) by making or receiving excessive in-
8 kind contributions.

9 Further, the Commission exercised prosecutorial discretion and dismissed the following
10 potential violations: (1) that the McLeod Committee or J.R. Dunstan Family LLC violated
11 2 U.S.C. § 441b(a) by making or receiving corporate contributions; (2) that the McLeod
12 Committee violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 110.1(e) by failing to properly
13 report contributions made by Barry L. Storey Family Investments, LLLP; (3) that the McLeod
14 Committee violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. §§ 104.3(b), 104.13 by failing to
15 properly disclose in-kind contributions on its 2011 Year-End Report; (4) that the McLeod
16 Committee violated 2 U.S.C. § 434(b)(4) and 11 C.F.R. §§ 104.3(b)(4)(i)(A), 104.9(a) by failing
17 to properly disclose payroll expenditures on its April 2012 Quarterly Report; and (5) that the
18 McLeod Committee violated 2 U.S.C. § 434(b)(4) and 11 C.F.R. §§ 104.3(b)(4)(i)(A), 104.9 by
19 failing to properly disclose staff reimbursements on its April 2012 Quarterly Report.

20 II. FACTUAL AND LEGAL ANALYSIS

21 A. Alleged Misappropriation of Information From Reports to the Commission

22 The Complaint alleges that the McLeod Committee obtained contributor information
23 from disclosure reports filed with the Commission by Rick W. Allen for Congress ("Allen

Committee”), the principal campaign committee of one of McLeod’s primary election
opponents. Compl. at 1-2. The McLeod Committee allegedly used that information to solicit
contributors in violation of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a). *Id.*

In support of its claim, the Complaint states that two Allen Committee donors — Molly
A. Hargather and Wyche Thomas Green — received fundraising mail from the McLeod
Committee in March 2012. Compl. at 1-2, Ex. B. These two donors allegedly had no prior
contact with the McLeod Committee. *Id.* at 1. And, according to the Complaint, the solicitations
used particular variations of Hargather’s and Green’s names and addresses that are (1) identical
to those used in the Allen Committee’s reports to the Commission, and (2) different from
variations of the donors’ names that appear in other public records. *Id.* at 1, Exs. A, B. As a
result, the Complaint contends that the McLeod Committee must have obtained Hargather’s and
Green’s names and addresses from the Allen Committee’s disclosure reports. *Id.* at 1-2.

In response, the McLeod Committee states that it outsourced its direct mail solicitations
to a third-party vendor and that it played no role in the development of its vendor’s mailing lists.
Committee Resp. at 5-6. The Committee also maintains that it has no information to suggest that
its vendor obtained contributor contact information in violation of the Act or Commission
regulations. *Id.*¹

OGC provided the McLeod Committee an opportunity to clarify its Response on
December 5, 2012. See Letter from Daniel Petalas, Assoc. Gen. Counsel, FEC, to Stephen
Passantino, Counsel for McLeod Committee (Dec. 5, 2012). The McLeod Committee identified
RGC Consulting, LLC (“RGC”) as its third-party vendor. See Affidavit of Mike Allen on Behalf

¹ The McLeod Committee also argues that the variations of Hargather’s and Green’s names used in the
solicitations are readily available through a wide range of public records. Committee Resp. at 6-7.

1 of Wright McLeod for Congress, Inc. at ¶ 3 (Dec. 14, 2012). OGC then notified RGC that it was
2 a potential respondent and provided it an opportunity to respond to the Complaint. *See* Letter
3 from Jeff S. Jordan, Supervisory Attorney, FEC, to Rebecca Grant Cummiskey, RGC
4 Consulting, LLC (Jan. 7, 2013). In its response, RGC denies that it obtained any contributor
5 information from Commission filings. RGC Consulting, LLC Response at 2 (Mar. 18, 2013)
6 (“RGC Resp.”). Instead, RGC explains that its owner, Rebecca Cummiskey, provided mailing
7 lists for McLeod Committee that were derived exclusively from her personal database of 30,000
8 contacts. *Id.* at 1. RGC states that over the last 12 years, Cummiskey has worked on numerous
9 campaigns and as a political fundraiser. As a result, Cummiskey explains that she developed her
10 database “largely from direct donations to [the] campaigns on which she has worked” and
11 through “rolodexes, chamber of commerce directories, association membership directories” and
12 other sources. *Id.*

13 The Commission found that there is no reason to believe that either the McLeod
14 Committee or RGC violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. §104.15(a). The Complaint is
15 incorrect that the version of Green’s name used in the McLeod Committee’s solicitation (*see*
16 Compl., Ex. B) is identical to that found in the Allen Committee reports. Although the
17 Complaint attaches a chart purporting to show the iteration of Green’s name used in an Allen
18 Committee report (*see* Compl., Ex. A.), the actual Allen Committee reports use a different
19 version of Green’s name. In three instances, the Allen Committee has reported Green’s name as:
20 “Mr. Wyche Thomas Green III.” *See* Rick W. Allen for Congress, FEC Form 3, 2012 July
21 Quarterly Report at 28-29 (Jul. 15, 2012); Rick W. Allen for Congress, FEC Form 3, 2011 Year-
22 End Report at 32 (Jan. 31, 2012). In contrast, the version of Green’s name in the McLeod

1 solicitations contains a comma after Green's last name: "Mr. Wyche Thomas Green, III."

2 (Compl, Ex. B.)

3 The version of Hargather's name and address appearing in the McLeod Committee
4 solicitation (Compl., Ex. B) is identical to that appearing in the relevant Allen Committee report,
5 *see* Rick W. Allen for Congress, FEC Form 3, 2011 Year-End Report at 34 (Jan. 31, 2012). This
6 isolated instance, however, is insufficient to support a reason to believe finding, even crediting
7 the Complaint's assertions that this iteration of Hargather's name appears nowhere else in the
8 public record, and that Hargather has never contributed to a political candidate other than Allen.
9 *See* Compl. at 1.

10 Accordingly, the Commission found that there is no reason to believe that the McLeod
11 Committee or RGC violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a).

12 **B. Alleged Prohibited and Excessive In-Kind Contributions**

13 1. **Alleged Prohibited Contribution Under 2 U.S.C. § 441b(a)**

14 The Complaint and the responses show that the McLeod Committee rented office space
15 for its campaign headquarters at 3632 Wheeler Road in Augusta, Georgia. *See, e.g.,* Compl. at 2;
16 James Hull Resp. at 1 (May 5, 2012) ("First Hull Resp."). The Complaint alleges that the
17 McLeod Committee reported to the Commission in-kind contributions of \$250 for "rent" in
18 January, February, and March 2012 from four individuals — Bernard Dunstan, Margaret
19 Dunstan, Hull, and Storey. Compl. at 2, Ex. C. The Complaint also claims that public records
20 show that the office space is owned by a limited liability company ("LLC"), and asks the
21 Commission to determine whether the use of the office space was donated by the individuals or
22 the LLC. Compl. at 2.

1 In response to this allegation, Respondents represent that just one of the four owners of
2 the property is an LLC. First Hull Resp. at 2, ¶ 2, Attachments.² Margaret Dunstan's share of
3 the property is held by J.R. Dunstan Family LLC, which is one of the four tenants-in-common
4 that owns the building. *Id.* at 2, ¶ 2. Margaret Dunstan is "the member manager of the [LLC,
5 who] is entitled to receive all rents from its assets." *Id.* It therefore appears that the J.R. Dunstan
6 Family LLC owns 25% of the office space, and not 100% as suggested by the Complaint.

7 In its April 2012 Quarterly Report, the McLeod Committee disclosed in-kind
8 contributions of \$250 from Margaret Dunstan in January, February, and March of 2012. *See*
9 April 2012 Quarterly Report. Given the Dunstan Family LLC's ownership interest in the
10 property, Margaret Dunstan's reported contributions raise the issue of whether *the LLC* made
11 prohibited corporate contributions to the McLeod Committee. Under the Act, corporations may
12 not make contributions to federal candidates. 2 U.S.C. § 441b(a). An LLC is treated as a
13 corporation for purposes of the contribution limits if it has publicly traded shares or if it elects to
14 be treated as a corporation with the Internal Revenue Service ("IRS") for federal tax purposes.
15 *See* 11 C.F.R. § 110.1(g)(3). If, instead, an LLC elects to be treated as a partnership, or makes
16 no election at all, then the LLC is treated as a partnership for purposes of the contribution limits.
17 *Id.* § 110.1(g)(2). In that case, a contribution from an LLC is attributed to the LLC and to each
18 of its "partners," *id.* § 110.1(e), unless the LLC has only "a single natural person member," in
19 which case the contribution is attributable to just that person, *id.* § 110.1(g)(4); *see also*
20 Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed.
21 Reg. 37,397, 37,399 (Jul. 12, 1999) (explanation and justification for 11 C.F.R. § 110.1(g)).

² The First Hull Response was subsequently adopted by respondents Barry L. Storey Family Investments, LLLP, Bernard Dunstan, and J.R. Dunstan Family LLC. *See* James M. Hull Resp. at 1 (Jun. 6, 2012).

Neither the complaint nor the responses provide a clear indication as to whether or not the LLC elected to be treated as a corporation for federal tax purposes. Considering the low dollar amount at issue, the Commission exercised prosecutorial discretion and dismissed the allegation that the J.R. Dunstan Family LLC made, or that the McLeod Committee accepted, a prohibited corporate contribution in violation of 2 U.S.C. § 441b(a).³ *See Heckler v. Chaney*, 420 U.S. 851 (1985).

2. Alleged Excessive In-Kind Contributions

The Complaint claims that the four in-kind contributions for rent that the McLeod Committee reported were made in violation of 2 U.S.C. § 441a(a)(1)(A). Compl. at 2. Section 441a(a)(1)(A) prohibits a person from making a contribution — which includes a gift, subscription, loan, advance, or deposit of money or anything of value for the purpose of influencing a federal election — to a candidate or authorized political committee in any calendar year, which aggregates in excess of \$2,500.⁴ 2 U.S.C. § 441a(a)(1); 11 C.F.R. § 100.52(a). “Anything of value” includes an in-kind contribution. 11 C.F.R. § 100.52(d)(1). If goods or services are provided at less than the usual and normal charge, the amount of the in-kind

³ Because it appears that Margaret Dunstan is the sole member manager of the J.R. Dunstan Family LLC, the McLeod Committee was correct to report the in-kind contributions attributable to J.R. Dunstan Family LLC’s share of the office space as having been made by Margaret Dunstan. *See* 11 C.F.R. § 110.1(g)(4). Additionally, as noted above, one of the other three owners of the office space is a limited liability limited partnership — Barry L. Storey Family Investments, LLLP, of which Barry L. Storey is the president. *See* First Hull Resp. at 2, ¶ 2; Second Hull Resp. at 1; *see also* Committee Resp. at 12 n.5. The Complaint does not allege that the LLLP made an excessive or prohibited contribution to the McLeod Committee, nor does it claim that the McLeod Committee misreported the in-kind contributions from Storey. *See* Compl., generally. But because the McLeod Committee failed to attribute Storey’s in-kind contribution to the LLLP (and any of its other partners, if any) in addition to Storey, the McLeod Committee may have in fact violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 110.1(e). Due to the relatively small amount of contributions involved (\$750), however, the Commission exercised its prosecutorial discretion and dismissed this potential violation.

⁴ At the relevant time section 441a(a)(1)(A)’s limit stood at \$2,500. That limit has since been adjusted upwards for inflation to \$2,600. *See* Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 78 Fed. Reg. 8530-02, 8532 (Feb. 6, 2013).

1 contribution is the difference between the usual and normal charge for the goods or services at
2 the time of the contribution and the amount charged the political committee. *Id.*

3 The Complaint argues that the in-kind contributions were excessive because the monthly
4 value of the office space occupied by the McLeod Committee is not \$1,000 but in excess of
5 \$6,000. Compl. at 2. The Complaint asserts that the McLeod Committee occupies 6,674 square
6 feet of rental space, and that the average annual rental price for comparable office space in the
7 same area is approximately \$11.50 per square-foot, which would make the fair market value of
8 the campaign office space more than \$6,000 per month. *Id.* In support of its calculation of the
9 property's fair market value, the Complaint provided listings of two available rental properties
10 located on the same road as the McLeod Committee headquarters. *Id.*, Ex. B. The Complaint
11 claims that the substantial difference between what the McLeod Committee reported and alleged
12 fair market value would amount to the making and receiving of excessive in-kind contributions.
13 *Id.* at 2.

14 The Respondents, however, convincingly contest the Complainant's valuation. They
15 explain that it is improper to determine the usual and normal charge for the subject property
16 based upon a sample size of two properties that are not comparable in terms of quality and that
17 have been listed but not actually rented. Committee Resp. at 10; First Hull Resp. at 1.
18 According to Respondents, the subject property has been vacant for a number of years and is
19 currently in "poor condition" because of a "number of roof, HVAC, and flooring problems," all
20 of which require "attention and repair prior to and during occupancy." Committee Resp. at 10;
21 First Hull Resp. at 2, ¶¶ 3, 5. As a result, the space rented to the Committee is not comparable in
22 terms of quality to the Complaint's cited sample properties, the Respondents argue. Committee
23 Resp. at 10, Ex. 2; First Hull Resp. at 2-5. Further, the Respondents deny that the McLeod

1 Committee is occupying the full 6,674 square feet as the Complaint alleged; rather they contend
2 that the McLeod Committee occupies approximately 1,000 square feet of the space. Committee
3 Resp. at 12; First Hull Resp. at 2, ¶ 4.

4 The Respondents also provided a detailed analysis of how the property owners
5 determined that \$1,000 per month is a commercially reasonable rental value for the McLeod
6 Committee's office space. *See* First Hull Resp. at 4-5; Committee Resp. at 12-13, Ex. 2 (Decl. of
7 James Hull) at ¶¶ 5-14. The Respondents assert, supported by a sworn declaration, that the
8 \$1,000 per month lease is commercially reasonable because: (1) the rental space is in poor
9 condition; (2) the McLeod Committee repaired the office space at its own expense; (3) the
10 McLeod Committee paid all utilities for the entire building; and (4) the McLeod Committee
11 agreed to the owners' right to terminate its occupancy at any time.⁵ Committee Resp. at 12-13,
12 Ex. 2 at ¶¶ 5-14. The McLeod Committee has provided a declaration from one of the property
13 owners, Hull, who states that he is an expert on the real estate market in Augusta, Georgia. *See*
14 Committee Resp., Ex. 2. Hull says that he has firsthand knowledge of the condition of the
15 property, the circumstances under which a portion of the property was leased to the Committee,
16 and the decision to forgive the rental payments resulting in the in-kind contributions. *Id.* ¶ 4.

17 The property owners state that they agreed that they would not receive rent from the
18 McLeod Committee, but instead would treat the \$1,000 monthly rental fee as an in-kind
19 contribution, provided that the McLeod Committee did not otherwise default on the terms of the
20 lease, and properly disclosed the unpaid rental payments as in-kind contributions. *Id.* ¶¶ 12, 13.

⁵ The Property Owners state that they have used this same rental technique on many occasions with retail tenants in its shopping centers. *Id.* at 5. They further acknowledge the difficulty of obtaining from market comparables or sales a "paired sales" metric (e.g., comparing similar properties, one having a landlord termination right and the other not having such a termination right). *Id.* They contend, however, that having the unfettered right to terminate is of great benefit to the landlord and detriment to the tenant, and consequently should be reflected in any calculation of "market rent." *Id.*

1 In addition, the McLeod Committee provided with its Response a summary of the building repair
2 expenses it incurred since it began occupancy of the rental office space, which amounts to
3 \$3,290.68. Committee Resp., Ex. 3.

4 The Respondents' detailed explanation of why the usual and normal charge for rent for
5 the property leased by the McLeod Committee is \$1,000 per month, and not in excess of \$6,000
6 per month as claimed by the Complaint, is convincing. The valuation method utilized appears to
7 be commercially reasonable and is supported by a sworn declaration of a member of the
8 ownership group, who facilitated the lease agreement with the McLeod Committee, and who has
9 in excess of 35 years of real estate experience. Moreover, there is no information in this matter
10 suggesting that a non-political committee would have had to pay more than the McLeod
11 Committee did to lease the property in question. *Cf.* MUR 6040 (Rangel) (FGCR) (Cert.,
12 02/24/10) and (Second GCR) (Cert., 10/18/11) (finding RTB where the information suggested
13 the landlord offered less favorable terms to similarly situated non-political committee tenants).
14 Therefore, the Commission found no reason to believe that the property owners or any other
15 respondent made, or that the McLeod Committee accepted, excessive in-kind contributions in the
16 form of office rental space in violation of 2 U.S.C. §§ 441a(a)(1)(A) or 441a(f).

17 **C. Alleged Reporting Violations**

18 Political committees are required to file disclosure reports with the Commission detailing,
19 among other things, their cash on hand balance, receipts, and expenditures. 2 U.S.C. § 434(b);
20 11 C.F.R. § 104.3. For authorized committees, such as the McLeod Committee, these reports
21 must disclose the identity of each person (other than a political committee) who makes a
22 contribution to the reporting committee whose contributions have an aggregate value in excess of
23 \$200 within the election cycle, and must itemize all such contributions. 2 U.S.C. § 434(b)(3)(A);

1 11 C.F.R. § 104.3(a)(4). Further, the regulations require that a committee disclose an in-kind
2 contribution as if it were a monetary contribution *and* an operating expenditure (to avoid
3 inflating its cash-on-hand) if it exceeds \$200 or aggregates over \$200 from the same individual
4 during a particular election cycle. 11 C.F.R. § 104.13(a). For its expenditures, a committee must
5 provide clear and accurate information regarding the name and address of the payee, and the
6 date, amount, and purpose of the expenditure. 11 C.F.R. §§ 104.3(b)(4), 104.9. The regulations
7 also provide guidance on what level of description of purpose is adequate. *Id.*
8 § 104.3(b)(4)(i)(A).

9 1. In-Kind Contributions

10 The Complaint alleges that the McLeod Committee's 2011 Year-End Report failed to
11 provide adequate descriptions for five in-kind contributions. Compl. at 2, Ex. D. The McLeod
12 Committee responds that it provided a brief statement or description of the contributions in
13 conformance with 11 C.F.R. §§ 104.3(b), and 104.13.⁶ Committee Resp. at 14-17. The McLeod
14 Committee further asserts that although more detailed descriptions are not required, it is willing
15 to amend its 2011 Year-End Report to provide more detail. *Id.* On July 3, 2012, the McLeod
16 Committee filed an Amended 2011 Year-End Report that includes more detailed descriptions of
17 the in-kind contributions. See Wright McLeod for Congress, Amended 2011 Year-End Report
18 (Jul. 3, 2012). While the original descriptions simply stated "in-kind," the amended report

⁶ The McLeod Committee's Compliance and Finance Director, Katia Stoddard, provided a declaration stating that its Year-End Report was prepared utilizing two separate computer programs — Microsoft Access and Aristotle 360 — and in migrating and reconciling data from the Committee's older Access database, she encountered various technical problems with the new program. Committee Resp. at 16, Ex. 6. Stoddard also claims to have had difficulty navigating Aristotle's features, which led her to inadvertently leave out more detailed descriptions of the in-kind contributions received by the McLeod Committee during this time period. *Id.* Further, the McLeod Committee notes that its description of the in-kind contributions in its 2011 Year-End Report raised no concerns from the Reports Analysis Division ("RAD") analysts. *Id.*

1 contains more detail, such as “roof repair for HQ bldg,” and “ceiling tile replacements.” *Id.* at
2 19, 39.

3 The McLeod Committee’s original descriptions of simply, “in-kind,” in its 2011 Year-
4 End Report were insufficient under 11 C.F.R. § 104.3(b)(4)(i)(A) (explaining that descriptions
5 such as “expenses or “miscellaneous” are not enough). Given the nature of the violation,
6 however, and the McLeod Committee’s subsequent amendments of its 2011 Year-End Report,
7 the Commission exercised prosecutorial discretion and dismissed the allegation that the McLeod
8 Committee violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. §§ 104.3(b) and 104.13. *See Heckler*
9 *v. Chaney*, 420 U.S. 851 (1985).

10 2. Payroll Expenditures

11 Complainant contends that the McLeod Committee’s April 2012 Quarterly Report failed
12 to itemize the recipients of six payroll expenditures and omitted payments for payroll taxes,
13 processing fees, and other associated expenses. Compl. at 2, Ex. E. RAD sent the Committee an
14 RFAI seeking clarification as to these payroll disbursements. *See* Committee RFAI (Jun. 18,
15 2012). RAD advised the McLeod Committee that, when itemizing disbursements to entities for
16 payroll services aggregating in excess of \$200 for an election cycle, memo entries are required,
17 including the name and address of the individual receiving the salary, and the date, amount, and
18 purpose of the payroll disbursements. *Id.*

19 Thereafter, the Committee filed three amendments to the April 2012 Quarterly Report,
20 which provided the memo entries and other clarifying information regarding the payroll
21 recipients. *See* Amended April 2012 Quarterly Reports of Receipts and Disbursements (July 3,

1 6, and 11, 2012).⁷ In comparing the three amendments to the original report, the McLeod
2 Committee provided more detailed memo entries for the payroll disbursements. It also separated
3 out a single \$8,727 disbursement made to Wright McLeod for Congress payroll on January 23,
4 2012, into four different disbursements made by the Committee to three individuals (Nahali
5 Croft (\$2,727); Ryan Reynolds (\$250); Michael Allen (\$1,250)), and one entity (RGC
6 Consulting (\$4,000)).⁸

7 Based on the available information, it appears that the McLeod Committee has violated
8 2 U.S.C. § 434(b)(4) and 11 C.F.R. §§ 104.3(b)(4)(i)(A) and 104.9(a) by failing to provide a
9 purpose or brief description or statement for one of its payroll expenditures and for failing to
10 provide memo entries for payroll disbursements that included the names and addresses of
11 individuals receiving the salary, and the date, amount, and purpose of the particular
12 disbursements. Given the nature of the violation and the McLeod Committee's subsequent
13 amendments to its April 2012 Quarterly Report, however, the Commission exercised
14 prosecutorial discretion and dismissed the allegation.

15 3. Staff Reimbursements

16 The Complaint alleges that the McLeod Committee's April 2012 Quarterly Report does
17 not specifically identify numerous disbursements as reimbursements nor does it identify the

⁷ The McLeod Committee noted in its Response that it discovered that an unrelated disbursement entry totaling \$6,000, dated January 11, 2012, on the same report did not include a memo entry describing the nature of the disbursement. Committee Resp. at 19 n.7. The McLeod Committee alleges that the nature of the disbursement can be determined from the name of the recipient, and states that the omission was a technical one, which would be corrected in its amendment. *Id.* We have reviewed the McLeod Committee's amendments for the April 2012 Quarterly Report and a memo entry with respect to this particular disbursement has been provided.

⁸ The McLeod Committee, in its April 2012 Quarterly Report, did not provide the names of the individuals or entities receiving the disbursements, but rather identified "Wright McLeod for Congress Payroll" as the recipients. *See* April 2012 Quarterly Report. In addition, the Committee originally reported the memo entries for these particular disbursements primarily as "payroll," but later amended the memo entries to more detailed descriptions such as "media consulting fees," "strategic political/consulting," and "fundraising consulting fees" on the amended reports. *Id.*; Amended April 2012 Quarterly Reports.

1 underlying recipients who may exceed the itemization threshold. Compl. at 2, Ex. F. The
2 McLeod Committee responds that neither the Act nor the regulations require further itemization
3 with additional memo entries detailing the nature of the end-user transactions. Committee Resp.
4 at 20, 23. Despite its position, the McLeod Committee indicated its intent to voluntarily amend
5 both reports to include the end-user reimbursement payments made to McLeod Committee staff
6 and include the word "reimbursement" to allay any concerns. *Id.* at 24.

7 RAD sent the McLeod Committee an RFAI seeking clarification regarding its failure to
8 itemize. *See* Committee RFAI (June 18, 2012). It requested that the Committee amend its report
9 to include memo entries detailing the names and addresses of the original vendor, and the date,
10 amount, and purpose of the original purchase. *Id.* Thereafter, the McLeod Committee amended
11 its April 2012 Quarterly Report to include this additional information.⁹ *See* Amended April 2012
12 Quarterly Reports (July 3, 6, and 11, 2012).

13 The Commission regulations require committees to provide further itemization of
14 reimbursement expenditures with additional memo entries detailing the nature of the
15 transactions. The Commission exercised its prosecutorial discretion and dismissed the allegation
16 based on the nature of the violation, the relatively low dollar amount involved, and the McLeod
17 Committee's amendments to its April 2012 Quarterly Report. *See Heckler v. Chaney*, 420 U.S.
18 851 (1985).

⁹ The Committee's revisions to these particular disbursements were made in its July 3, 2012, amendment. *See* Amended April 2012 Quarterly Report. The Committee amended its memo entries to reflect that the disbursements were, in fact, reimbursements for items such as paint, office supplies, and lodging expenses.

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 6576

RESPONDENTS:

James M. Hull
Bernard S. Dunstan, Jr.
Barry L. Storey, president of Barry L. Storey
Family Investments LLLP
Margaret D. Dunstan, trustee to the J.R. Dunstan
Family LLC, as successor to J. Richard Dunstan

I. INTRODUCTION

This matter was generated by a complaint filed by Scott W. Paradise. *See* 2 U.S.C. § 437(g)(a)(1). Wright McLeod was a Republican candidate for Georgia's 12th congressional district in 2012. His principal campaign committee is Wright McLeod for Congress ("McLeod Committee") and Cameron Nixon is its treasurer. The Complaint alleges, in part, that the McLeod Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by:

- accepting excessive in-kind contributions through its use of office space provided at less than the usual and normal charge in violation of 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f);
- failing to properly report excessive in-kind contributions of office space in violation of 2 U.S.C. § 434(b)(3)(A); and
- accepting contributions from a limited liability corporation in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 110.1(g).

The Complaint also alleges that four individual respondents — Bernard S. Dunstan, Jr., Margaret D. Dunstan (trustee and member manager of J.R. Dunstan Family LLC), Barry L. Storey (president and general equity partner of Barry L. Storey Family Investments, LLLP), and

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1 James M. Hull — made excessive in-kind contributions to the McLeod Committee by
2 contributing office space at less than fair market value. All respondents deny the allegations.

3 As detailed below, the Commission found no reason to believe (1) that any respondent
4 violated 2 U.S.C. §§ 441a(a)(1)(A) or 441a(f) by making or receiving excessive in-kind
5 contributions. Further, The Commission exercised prosecutorial discretion and dismissed the
6 potential violations that (1) the McLeod Committee or J.R. Dunstan Family LLC violated
7 2 U.S.C. § 441b(a) by making or receiving corporate contributions; and (2) the McLeod
8 Committee violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 110.1(e) by failing to properly
9 report contributions made by Barry L. Storey Family Investments, LLLP.

10 II. FACTUAL AND LEGAL ANALYSIS

11 A. Alleged Prohibited and Excessive In-Kind Contributions

12 1. Alleged Prohibited Contribution Under 2 U.S.C. § 441b(a)

13 The Complaint and the responses show that the McLeod Committee rented office space
14 for its campaign headquarters at 3632 Wheeler Road in Augusta, Georgia. *See, e.g.*, Compl. at 2;
15 James Hull Resp. at 1 (May 5, 2012) (“First Hull Resp.”). The Complaint alleges that the
16 McLeod Committee reported to the Commission in-kind contributions of \$250 for “rent” in
17 January, February, and March 2012 from four individuals — Bernard Dunstan, Margaret
18 Dunstan, Hull, and Storey. Compl. at 2, Ex. C. The Complaint also claims that public records
19 show that the office space is owned by a limited liability company (“LLC”), and asks the
20 Commission to determine whether the use of the office space was donated by the individuals or
21 the LLC. Compl. at 2.

1 In response to this allegation, Respondents represent that just one of the four owners of
2 the property is an LLC. First Hull Resp. at 2, ¶ 2, Attachments.¹ Margaret Dunstan's share of
3 the property is held by J.R. Dunstan Family LLC, which is one of the four tenants-in-common
4 that owns the building. *Id.* at 2, ¶ 2. Margaret Dunstan is "the member manager of the [LLC,
5 who] is entitled to receive all rents from its assets." *Id.* It therefore appears that the J.R. Dunstan
6 Family LLC owns 25% of the office space, and not 100% as suggested by the Complaint.

7 In its April 2012 Quarterly Report, the McLeod Committee disclosed in-kind
8 contributions of \$250 from Margaret Dunstan in January, February, and March of 2012. *See*
9 April 2012 Quarterly Report. Given the Dunstan Family LLC's ownership interest in the
10 property, Margaret Dunstan's reported contributions raise the issue of whether *the LLC* made
11 prohibited corporate contributions to the McLeod Committee. Under the Act, corporations may
12 not make contributions to federal candidates. 2 U.S.C. § 441b(a). An LLC is treated as a
13 corporation for purposes of the contribution limits if it has publicly traded shares or if it elects to
14 be treated as a corporation with the Internal Revenue Service ("IRS") for federal tax purposes.
15 *See* 11 C.F.R. § 110.1(g)(3). If, instead, an LLC elects to be treated as a partnership, or makes
16 no election at all, then the LLC is treated as a partnership for purposes of the contribution limits.
17 *Id.* § 110.1(g)(2). In that case, a contribution from an LLC is attributed to the LLC and to each
18 of its "partners," *id.* § 110.1(e), unless the LLC has only "a single natural person member," in
19 which case the contribution is attributable to just that person, *id.* § 110.1(g)(4); *see also*
20 Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed.
21 Reg. 37,397, 37,399 (Jul. 12, 1999) (explanation and justification for 11 C.F.R. § 110.1(g)).

¹ The First Hull Response was subsequently adopted by respondents Barry L. Storey Family Investments, LLLP, Bernard Dunstan, and J.R. Dunstan Family LLC. *See* James M. Hull Resp. at 1 (Jun. 6, 2012).

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1 Neither the complaint nor the responses provide a clear indication as to whether or not
2 the LLC elected to be treated as a corporation for federal tax purposes. Considering the low
3 dollar amount at issue, the Commission exercised prosecutorial discretion and dismissed the
4 allegation that the J.R. Dunstan Family LLC made, or that the McLeod Committee accepted, a
5 prohibited corporate contribution in violation of 2 U.S.C. § 441b(a).² *See Heckler v. Chaney*,
6 420 U.S. 851 (1985).

7 2. Alleged Excessive In-Kind Contributions

8 The Complaint claims that the four in-kind contributions for rent that the McLeod
9 Committee reported were made in violation of 2 U.S.C. § 441a(a)(1)(A). Compl. at 2. Section
10 441a(a)(1)(A) prohibits a person from making a contribution — which includes a gift,
11 subscription, loan, advance, or deposit of money or anything of value for the purpose of
12 influencing a federal election — to a candidate or authorized political committee in any calendar
13 year, which aggregates in excess of \$2,500.³ 2 U.S.C. § 441a(a)(1); 11 C.F.R. § 100.52(a).
14 “Anything of value” includes an in-kind contribution. 11 C.F.R. § 100.52(d)(1). If goods or
15 services are provided at less than the usual and normal charge, the amount of the in-kind

² Because it appears that Margaret Dunstan is the sole member manager of the J.R. Dunstan Family LLC, the McLeod Committee was correct to report the in-kind contributions attributable to J.R. Dunstan Family LLC's share of the office space as having been made by Margaret Dunstan. *See* 11 C.F.R. § 110.1(g)(4). Additionally, as noted above, one of the other three owners of the office space is a limited liability limited partnership — Barry L. Storey Family Investments, LLLP, of which Barry L. Storey is the president. *See* First Hull Resp. at 2, ¶ 2; Second Hull Resp. at 1; *see also* Committee Resp. at 12 n.5. The Complaint does not allege that the LLLP made an excessive or prohibited contribution to the McLeod Committee, nor does it claim that the McLeod Committee misreported the in-kind contributions from Storey. *See* Compl., generally. But because the McLeod Committee failed to attribute Storey's in-kind contribution to the LLLP (and any of its other partners, if any) in addition to Storey, the McLeod Committee may have in fact violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 110.1(e). Due to the relatively small amount of contributions involved (\$750), however, the Commission exercised its prosecutorial discretion and dismissed this potential violation.

³ At the relevant time section 441a(a)(1)(A)'s limit stood at \$2,500. That limit has since been adjusted upwards for inflation to \$2,600. *See* Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 78 Fed. Reg. 8530-02, 8532 (Feb. 6, 2013).

1 contribution is the difference between the usual and normal charge for the goods or services at
2 the time of the contribution and the amount charged the political committee. *Id.*

3 The Complaint argues that the in-kind contributions were excessive because the monthly
4 value of the office space occupied by the McLeod Committee is not \$1,000 but in excess of
5 \$6,000. Compl. at 2. The Complaint asserts that the McLeod Committee occupies 6,674 square
6 feet of rental space, and that the average annual rental price for comparable office space in the
7 same area is approximately \$11.50 per square-foot, which would make the fair market value of
8 the campaign office space more than \$6,000 per month. *Id.* In support of its calculation of the
9 property's fair market value, the Complaint provided listings of two available rental properties
10 located on the same road as the McLeod Committee headquarters. *Id.*, Ex. B. The Complaint
11 claims that the substantial difference between what the McLeod Committee reported and alleged
12 fair market value would amount to the making and receiving of excessive in-kind contributions.
13 *Id.* at 2.

14 The Respondents, however, convincingly contest the Complainant's valuation. They
15 explain that it is improper to determine the usual and normal charge for the subject property
16 based upon a sample size of two properties that are not comparable in terms of quality and that
17 have been listed but not actually rented. Committee Resp. at 10; First Hull Resp. at 1.
18 According to Respondents, the subject property has been vacant for a number of years and is
19 currently in "poor condition" because of a "number of roof, HVAC, and flooring problems," all
20 of which require "attention and repair prior to and during occupancy." Committee Resp. at 10;
21 First Hull Resp. at 2, ¶¶ 3, 5. As a result, the space rented to the Committee is not comparable in
22 terms of quality to the Complaint's cited sample properties, the Respondents argue. Committee
23 Resp. at 10, Ex. 2; First Hull Resp. at 2-5. Further, the Respondents deny that the McLeod

1 Committee is occupying the full 6,674 square feet as the Complaint alleged; rather they contend
2 that the McLeod Committee occupies approximately 1,000 square feet of the space. Committee
3 Resp. at 12; First Hull Resp. at 2, ¶ 4.

4 The Respondents also provided a detailed analysis of how the property owners
5 determined that \$1,000 per month is a commercially reasonable rental value for the McLeod
6 Committee's office space. *See* First Hull Resp. at 4-5; Committee Resp. at 12-13, Ex. 2 (Decl. of
7 James Hull) at ¶¶ 5-14. The Respondents assert, supported by a sworn declaration, that the
8 \$1,000 per month lease is commercially reasonable because: (1) the rental space is in poor
9 condition; (2) the McLeod Committee repaired the office space at its own expense; (3) the
10 McLeod Committee paid all utilities for the entire building; and (4) the McLeod Committee
11 agreed to the owners' right to terminate its occupancy at any time.⁴ Committee Resp. at 12-13,
12 Ex. 2 at ¶¶ 5-14. The McLeod Committee has provided a declaration from one of the property
13 owners, Hull, who states that he is an expert on the real estate market in Augusta, Georgia. *See*
14 Committee Resp., Ex. 2. Hull says that he has firsthand knowledge of the condition of the
15 property, the circumstances under which a portion of the property was leased to the Committee,
16 and the decision to forgive the rental payments resulting in the in-kind contributions. *Id.* ¶ 4.

17 The property owners state that they agreed that they would not receive rent from the
18 McLeod Committee, but instead would treat the \$1,000 monthly rental fee as an in-kind
19 contribution, provided that the McLeod Committee did not otherwise default on the terms of the

⁴ The property owners state that they have used this same rental technique on many occasions with retail tenants in its shopping centers. *Id.* at 5. They further acknowledge the difficulty of obtaining from market comparables or sales a "paired sales" metric (*e.g.*, comparing similar properties, one having a landlord termination right and the other not having such a termination right). *Id.* They contend, however, that having the unfettered right to terminate is of great benefit to the landlord and detriment to the tenant, and consequently should be reflected in any calculation of "market rent." *Id.*

1 lease, and properly disclosed the unpaid rental payments as in-kind contributions. *Id.* ¶¶ 12, 13.

2 In addition, the McLeod Committee provided with its Response a summary of the building repair
3 expenses it incurred since it began occupancy of the rental office space, which amounts to
4 \$3,290.68. Committee Resp., Ex. 3.

5 The Respondents' detailed explanation of why the usual and normal charge for rent for
6 the property leased by the McLeod Committee is \$1,000 per month, and not in excess of \$6,000
7 per month as claimed by the Complaint, is convincing. The valuation method utilized appears to
8 be commercially reasonable and is supported by a sworn declaration of a member of the
9 ownership group, who facilitated the lease agreement with the McLeod Committee, and who has
10 in excess of 35 years of real estate experience. Moreover, there is no information in this matter
11 suggesting that a non-political committee would have had to pay more than the McLeod
12 Committee did to lease the property in question. *Cf.* MUR 6040 (Rangel) (FGCR) (Cert.,
13 02/24/10) and (Second GCR) (Cert., 10/18/11) (finding RTB where the information suggested
14 the landlord offered less favorable terms to similarly situated non-political committee tenants).
15 Therefore, the Commission found no reason to believe that the property owners or any other
16 respondent made, or that the McLeod Committee accepted, excessive in-kind contributions in the
17 form of office rental space in violation of 2 U.S.C. §§ 441a(a)(1)(A) or 441a(f).

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 6576

RESPONDENT:

RGC Consulting, LLC

I. INTRODUCTION

This matter was generated by a complaint filed by Scott W. Paradise. *See* 2 U.S.C. § 437(g)(a)(1). Wright McLeod was a Republican candidate for Georgia's 12th congressional district in 2012. His principal campaign committee is Wright McLeod for Congress ("McLeod Committee") and Cameron Nixon is its treasurer. The Complaint alleges, in part, that the McLeod Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by using proprietary donor information obtained from Commission disclosure reports filed by Rick W. Allen for Congress to solicit funds in violation of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a). All respondents deny the allegation.

As detailed below, the Commission found no reason to believe that the McLeod Committee or its vendor, RGC Consulting, LLC, violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a) by soliciting donors with information from Commission reports.

II. FACTUAL AND LEGAL ANALYSIS

A. Alleged Misappropriation of Information From Reports to the Commission

The Complaint alleges that the McLeod Committee obtained contributor information from disclosure reports filed with the Commission by Rick W. Allen for Congress ("Allen Committee"), the principal campaign committee of one of McLeod's primary election

1 opponents. Compl. at 1-2. The McLeod Committee allegedly used that information to solicit
2 contributors in violation of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a). *Id.*

3 In support of its claim, the Complaint states that two Allen Committee donors — Molly
4 A. Hargather and Wyche Thomas Green — received fundraising mail from the McLeod
5 Committee in March 2012. Compl. at 1-2, Ex. B. These two donors allegedly had no prior
6 contact with the McLeod Committee. *Id.* at 1. And, according to the Complaint, the solicitations
7 used particular variations of Hargather's and Green's names and addresses that are (1) identical
8 to those used in the Allen Committee's reports to the Commission, and (2) different from
9 variations of the donors' names that appear in other public records. *Id.* at 1, Exs. A, B. As a
10 result, the Complaint contends that the McLeod Committee must have obtained Hargather's and
11 Green's names and addresses from the Allen Committee's disclosure reports. *Id.* at 1-2.

12 In response, the McLeod Committee states that it outsourced its direct mail solicitations
13 to a third-party vendor and that it played no role in the development of its vendor's mailing lists.
14 Committee Resp. at 5-6. The Committee also maintains that it has no information to suggest that
15 its vendor obtained contributor contact information in violation of the Act or Commission
16 regulations. *Id.*¹

17 OGC provided the McLeod Committee an opportunity to clarify its Response on
18 December 5, 2012. *See* Letter from Daniel Petalas, Assoc. Gen. Counsel, FEC, to Stephen
19 Passantino, Counsel for McLeod Committee (Dec. 5, 2012). The McLeod Committee identified
20 RGC Consulting, LLC ("RGC") as its third-party vendor. *See* Affidavit of Mike Allen on Behalf
21 of Wright McLeod for Congress, Inc. at ¶ 3 (Dec. 14, 2012). OGC then notified RGC that it was

¹ The McLeod Committee also argues that the variations of Hargather's and Green's names used in the solicitations are readily available through a wide range of public records. Committee Resp. at 6-7.

1 a potential respondent and provided it an opportunity to respond to the Complaint. *See* Letter
2 from Jeff S. Jordan, Supervisory Attorney, FEC, to Rebecca Grant Cummiskey, RGC
3 Consulting, LLC (Jan. 7, 2013). In its response, RGC denies that it obtained any contributor
4 information from Commission filings. RGC Consulting, LLC Response at 2 (Mar. 18, 2013)
5 (“RGC Resp.”). Instead, RGC explains that its owner, Rebecca Cummiskey, provided mailing
6 lists for McLeod Committee that were derived exclusively from her personal database of 30,000
7 contacts. *Id.* at 1. RGC states that over the last 12 years, Cummiskey has worked on numerous
8 campaigns and as a political fundraiser. As a result, Cummiskey explains that she developed her
9 database “largely from direct donations to [the] campaigns on which she has worked” and
10 through “rolodexes, chamber of commerce directories, association membership directories” and
11 other sources. *Id.*

12 The Commission found that there is no reason to believe that either the McLeod
13 Committee or RGC violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. §104.15(a). The Complaint is
14 incorrect that the version of Green’s name used in the McLeod Committee’s solicitation (*see*
15 Compl., Ex. B) is identical to that found in the Allen Committee reports. Although the
16 Complaint attaches a chart purporting to show the iteration of Green’s name used in an Allen
17 Committee report (*see* Compl., Ex. A), the actual Allen Committee reports use a different
18 version of Green’s name. In three instances, the Allen Committee has reported Green’s name as:
19 “Mr. Wyche Thomas Green III.” *See* Rick W. Allen for Congress, FEC Form 3, 2012 July
20 Quarterly Report at 28-29 (Jul. 15, 2012); Rick W. Allen for Congress, FEC Form 3, 2011 Year-
21 End Report at 32 (Jan. 31, 2012). In contrast, the version of Green’s name in the McLeod
22 solicitations contains a comma after Green’s last name: “Mr. Wyche Thomas Green, III.”
23 (Compl, Ex. B.)

1 The version of Hargather's name and address appearing in the McLeod Committee
2 solicitation (Compl., Ex. B) is identical to that appearing in the relevant Allen Committee report,
3 *see* Rick W. Allen for Congress, FEC Form 3, 2011 Year-End Report at 34 (Jan. 31, 2012). This
4 isolated instance, however, is insufficient to support a reason to believe finding, even crediting
5 the Complaint's assertions that this iteration of Hargather's name appears nowhere else in the
6 public record, and that Hargather has never contributed to a political candidate other than Allen.
7 *See* Compl. at 1.

8 Accordingly, the Commission found that there is no reason to believe that the McLeod
9 Committee or RGC violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a).